

Message Text

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TO AMEMBASSY BUCHAREST

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E.O. 11652: N/A

TAGS: EAIR, RO

SUBJECT: CIVAIR: US-ROMANIA AIR TRANSPORT AGREEMENT

REF: (A) BUCHAREST 4737 (B) STATE 108925

1. IONESCU REPORT (REF A) IS ESSENTIALLY CORRECT, DEPT.
OFFICER NOT ONLY DISCUSSED ADDITIONAL LANGUAGE AMENDING
SUBPARAGRAPH 3 (M) OF MOU OF APRIL 26, 1978 WITH RACEANU,
BUT ALSO GAVE HIM NEW TEXT TO FORWARD TO BUCHAREST.
SUBSEQUENTLY, AFTER LEGAL REVIEW, SLIGHT VARIATIONS FROM
MOU FORM WERE MADE IN SUBPARAGRAPHS 3 (I) AND 3 (J).

2. FOLLOWING IS TEXT OF US NOTE BASED ON UNDERSTANDINGS
OF APRIL 26, 1978:

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BEGIN TEXT:

....TO REFER TO DISCUSSIONS BETWEEN REPRESENTATIVES OF OUR
TWO GOVERNMENTS IN WASHINGTON, D.C. FROM APRIL 17 TO 26,
1978 CONCERNING APPROPRIATE ARRANGEMENTS FOR THE PROVISION
OF SCHEDULED AND NONSCHEDULED AIR SERVICE BY AIRLINES OF
BOTH COUNTRIES.

THE TWO DELEGATIONS REACHED AD REFERENDUM AGREEMENT ON
THE FOLLOWING UNDERSTANDINGS AND RECOMMENDATIONS WHICH

WERE INCORPORATED INTO A MEMORANDUM OF UNDERSTANDING DATED
APRIL 26, 1978:

1. IN THE INTEREST OF FURTHERING ROMANIAN-UNITED STATES
CIVIL AVIATION RELATIONS, THE TWO DELEGATIONS AGREED THAT
IT WAS IN THE MUTUAL INTEREST TO EXPAND AVIATION
OPPORTUNITIES SO AS TO INCREASE TOURISM, TRADE AND
COMMERCIAL INTERCHANGE, AND PROPOSED TO AMEND AND RENEW
THE US-ROMANIA CIVIL AIR TRANSPORT AGREEMENT OF 1973
WHICH EXPIRED ON MARCH 31, 1977.

2. IN ORDER TO ASSURE THAT THE RENEWED AND AMENDED
AGREEMENT REFLECTS AN EQUITABLE EXCHANGE OF
OPPORTUNITIES AND BENEFITS FOR THE AIRLINES OF EACH COUNTRY,
AFTER TAKING INTO ACCOUNT THE NATURE OF THE RESPECTIVE
MARKETS AND THE COMMERCIAL ACCESS WHICH EACH COUNTRY IS
ABLE TO MAKE AVAILABLE TO THE OTHER, BOTH DELEGATIONS
AGREED TO RECOMMEND TO THEIR RESPECTIVE GOVERNMENTS
THE FOLLOWING:

(A) THAT THE ROMANIAN DESIGNATED AIRLINE WILL APPOINT
THE UNITED STATES DESIGNATED AIRLINE AS ITS AIRPORT GROUND
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HANDLING AGENT IN THE UNITED STATES.

(B) THAT THE UNITED STATES DESIGNATED AIRLINE WILL CONTINUE
TO ENJOY AT ITS OFFICES IN THE SOCIALIST REPUBLIC OF
ROMANIA THE RIGHT TO SELL AIR TRANSPORTATION TO ANY PERSON,
FOR FREELY CONVERTIBLE CURRENCY USING ITS OWN
TRANSPORTATION DOCUMENTS.

(C) THAT SALES OF AIR TRANSPORTATION IN ROMANIA FOR
ROMANIAN CURRENCY ON ALL SERVICES OF THE DESIGNATED
AIRLINE OF THE UNITED STATES WILL CONTINUE TO BE MADE,
THROUGH THE DESIGNATED AIRLINE OF ROMANIA AS GENERAL
SALES AGENT FOR THE UNITED STATES DESIGNATED AIRLINE, IN
COMPLIANCE WITH ROMANIAN CURRENCY LAWS.

(D) THAT THE REVENUES EARNED FROM SALES PERFORMED UNDER
SUBPARAGRAPH (C) ABOVE MAY, AT THE OPTION OF THE
DESIGNATED AIRLINE OF THE UNITED STATES BE USED IN WHOLE
OR IN PART TO COVER ITS LOCAL EXPENSES CONNECTED WITH THE
OPERATION OF ITS AIR SERVICES AND WITH THE ACTIVITIES OF
ITS LOCAL REPRESENTATIVES AND, WITH THE APPROVAL OF THE
ROMANIAN AUTHORITIES, FOR OTHER PURPOSES. LOCAL EXPENSES
FOR WHICH SUCH REVENUES MAY BE USED AS A MATTER OF RIGHT
INCLUDE RENT AND MAINTENANCE OF OFFICES AND HOUSING,
SALARIES OF EMPLOYEES, PURCHASE AND MAINTENANCE OF COMPANY

VEHICLES, ADVERTISING, LANDING AND OTHER AIRPORT FEES, AIRPORT GROUND HANDLING FEES, CATERING AND DOMESTICALLY PRODUCED ITEMS NECESSARY FOR THE MAINTENANCE AND SERVICING OF AIRCRAFT.

(E) THAT ANY REVENUES IN EXCESS OF SUMS LOCALLY DISBURSED IN ACCORDANCE WITH SUBPARAGRAPH (D) ABOVE MAY BE CONVERTED IN ACCORDANCE WITH PARAGRAPH 3 OF ARTICLE XIV OF THE CIVIL AIR TRANSPORT AGREEMENT OF 1973, AS RENEWED AND AMENDED.

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(F) THAT THE ROMANIAN AUTHORITIES WILL USE THEIR BEST EFFORTS TO ENSURE THAT THE COMMERCIAL OPPORTUNITIES OF THE UNITED STATES DESIGNATED AIRLINE(S) IN THE SOCIALIST REPUBLIC OF ROMANIA ARE FURTHER EXPANDED. IN NO EVENT WILL THE UNITED STATES DESIGNATED AIRLINE(S) ENJOY LESS FAVORABLE COMMERCIAL OPPORTUNITIES IN THE SOCIALIST REPUBLIC OF ROMANIA THAN THE ROMANIAN DESIGNATED AIRLINE.

(G) THAT THE DESIGNATED AIRLINE OF ROMANIA WILL ENJOY THE RIGHT TO OPERATE ON ITS ROUTE THE FOLLOWING NUMBER OF ROUNDTRIP FREQUENCIES PER WEEK DURING THE PERIODS INDICATED:

PERIOD	NO. OF FREQUENCIES
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1978 SUMMER SEASON	2
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1978/1979 WINTER SEASON	2
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1979 SUMMER SEASON AND THEREAFTER	2
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(H) THAT ADDITIONAL PASSENGER, ALL-CARGO OR COMBINATION SCHEDULED FREQUENCIES, INCLUDING EXTRA SECTIONS, WILL BE OPERATED ONLY FOLLOWING APPROVAL BY THE UNITED STATES AERONAUTICAL AUTHORITIES. REQUESTS FOR ADDITIONAL SCHEDULED FREQUENCIES WILL BE MADE BY FILING THE PROPOSED SCHEDULE THROUGH DIPLOMATIC CHANNELS AT LEAST 90 DAYS BUT NO MORE THAN 180 DAYS BEFORE ITS PROPOSED EFFECTIVE DATE, AND THE ROMANIAN AUTHORITIES WILL BE INFORMED OF THE

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DECISION MADE BY THE UNITED STATES AUTHORITIES NO LATER THAN 45 DAYS AFTER THE UNITED STATES AUTHORITIES RECEIVE

THE REQUEST. REQUESTS FOR EXTRA SECTIONS WILL BE MADE BY FILING THROUGH DIPLOMATIC CHANNELS AT LEAST 15 DAYS

BEFORE THE PROPOSED DATE OF OPERATIONS, UNLESS THE RECEIVING AUTHORITY ACCEPTS A SHORTER NOTICE. ANY ADDITIONAL FREQUENCIES, INCLUDING EXTRA SECTIONS, WHICH MAY BE APPROVED BY THE UNITED STATES AERONAUTICAL AUTHORITIES FOR SERVICE ON A PARTICULAR ROUTE MAY NOT BE OPERATED WITH TRAFFIC RIGHTS BETWEEN INTERMEDIATE POINTS ON THE ROUTE AND NEW YORK UNLESS SO AUTHORIZED BY THE UNITED STATES AUTHORITIES. ANY APPLICATIONS FOR ADDITIONAL FREQUENCIES WILL BE JUDGED ON THE BASIS OF COMITY AND RECIPROCITY AS WELL AS TAKING INTO ACCOUNT SUBPARAGRAPHS 3(A) AND 3(B) OF THIS NOTE, AND THE LEVEL OF UNITED STATES AIRLINE PARTICIPATION IN THE MARKET.

(I) THAT THE ROMANIAN DESIGNATED AIRLINE, ACTING AS GENERAL SALES AGENT IN ROMANIA FOR THE UNITED STATES DESIGNATED AIRLINE, SHALL SELL FOR THE UNITED STATES DESIGNATED AIRLINE NOT LESS THAN 50 PERCENT OF THE TRANSATLANTIC PASSENGER MARKET WHICH ORIGINATES IN ROMANIA FOR TRAVEL TO AND FROM THE UNITED STATES AND FOR WHICH PAYMENT IS MADE IN ROMANIAN CURRENCY. A DEFICIENCY IN 1978 OR ANY SUBSEQUENT YEAR IN MEETING THE COMMITMENT FOR THAT YEAR WILL BE MADE UP IN THE SUCCEEDING YEAR.

(J) THAT IN THE EVENT SALES FOR ANY QUARTER ARE LESS THAN THE COMMITMENT OUTLINED IN SUBPARAGRAPH 2 (I) OF THIS NOTE, PROMPT CONSULTATIONS SHALL BE HELD BETWEEN THE DESIGNATED AIRLINES, OR IF REQUESTED BY EITHER GOVERNMENT, BETWEEN THE TWO GOVERNMENTS, IN ORDER TO MAKE APPROPRIATE ADJUSTMENTS. IF AGREEMENT ON SUCH ADJUSTMENTS CANNOT BE REACHED, THE UNITED STATES GOVERNMENT MAY GIVE NOTICE OF LIMITED OFFICIAL USE
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INTENTION TO TERMINATE THE CIVIL AIR TRANSPORT AGREEMENT, AND, UNLESS SUCH NOTICE IS WITHDRAWN, THE CIVIL AIR TRANSPORT AGREEMENT SHALL TERMINATE 60 DAYS AFTER THE DATE OF RECEIPT OF THE NOTICE OF INTENTION TO TERMINATE.

(K) THAT THE ROMANIAN AND UNITED STATES DESIGNATED AIRLINES MAY EXPLORE THE FEASIBILITY OF ARRANGING A BLOCKED-SPACE, ALL-CARGO SERVICE.

(L) THAT THE PRESENT ROMANIAN AIRLINE'S ANNUAL CHARTER AUTHORIZATION OF 30 FLIGHTS BE RETAINED, BUT THAT ANY APPLICATIONS FOR ADDITIONAL FLIGHTS WILL BE JUDGED ON THE BASIS OF COMITY AND RECIPROCITY, AS WELL AS TAKING INTO ACCOUNT SUBPARAGRAPHS 3(A) AND 3(B) OF THIS NOTE, AND THE LEVEL OF US AIRLINE PARTICIPATION IN THE

MARKET.

(M) THAT CHARTERS (PASSENGER OR CARGO) ORIGINATING IN ROMANIA MAY BE OPERATED BY THE DESIGNATED AIRLINES OF EITHER CONTRACTING PARTY PURSUANT TO THE ROMANIAN RULES AND REGULATIONS AND AT PRICES AUTHORIZED BY SUCH RULES AND REGULATIONS OR ANY WAIVER OR EXEMPTION THEREOF. CHARTER FLIGHTS ORIGINATING IN ROMANIA BY UNITED STATES DESIGNATED AIRLINES WILL BE BASED ON MARKET DEMAND AND OPERATED ON THE SAME BASIS OF COMITY AND RECIPROCITY AS OUTLINED IN PARAGRAPH 2(L) OF THIS NOTE FOR THE ROMANIAN DESIGNATED AIRLINE.

(N) THAT THE CIVIL AIR TRANSPORT AGREEMENT BE AMENDED AS FOLLOWS:

1. ARTICLE I(3):

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"3. THE TERM 'DESIGNATED AIRLINE' SHALL MEAN AN AIRLINE THAT ONE CONTRACTING PARTY HAS NOTIFIED THE OTHER CONTRACTING PARTY TO BE AN AIRLINE WHICH WILL OPERATE A SPECIFIC ROUTE OR ROUTES LISTED IN THE SCHEDULE OF THIS AGREEMENT OR AN AIRLINE WHICH OPERATES CHARTER SERVICES. SUCH NOTIFICATION SHALL BE COMMUNICATED IN WRITING, THROUGH DIPLOMATIC CHANNELS."

2. ARTICLE XIII:

"1. ALL RATES AND FARES TO BE CHARGED BY AN AIRLINE OF ONE CONTRACTING PARTY FOR CARRIAGE TO OR FROM THE TERRITORY OF THE OTHER CONTRACTING PARTY SHALL BE ESTABLISHED AT REASONABLE LEVELS, DUE REGARD BEING PAID TO ALL RELEVANT FACTORS, SUCH AS COSTS OF OPERATION, REASONABLE PROFIT, AS WELL AS THE CHARACTERISTICS OF EACH SERVICE. SUCH RATES AND FARES SHALL BE SUBJECT TO THE APPROVAL OF THE AERONAUTICAL AUTHORITIES OF THE CONTRACTING PARTIES, WHO SHALL ACT IN ACCORDANCE WITH THEIR OBLIGATIONS UNDER THIS AGREEMENT AND THIS MEMORANDUM OF UNDERSTANDING, WITHIN THE LIMITS OF THEIR LEGAL POWERS.

"2. ANY RATE OR FARE PROPOSED TO BE CHARGED BY AN AIRLINE OF EITHER CONTRACTING PARTY FOR CARRIAGE TO OR FROM THE TERRITORY OF THE OTHER CONTRACTING PARTY SHALL, IF SO REQUIRED, BE FILED BY SUCH AIRLINE WITH THE AERONAUTICAL AUTHORITIES OF THE OTHER CONTRACTING PARTY AT LEAST FORTY-FIVE (45) DAYS BEFORE THE PROPOSED DATE OF INTRODUCTION, UNLESS THE AERONAUTICAL AUTHORITIES WITH WHOM

THE FILING IS TO BE MADE PERMIT FILING ON SHORTER NOTICE.
THE AERONAUTICAL AUTHORITIES OF EACH CONTRACTING PARTY
SHALL USE THEIR BEST EFFORTS TO ENSURE THAT THE RATES AND
FARES CHARGED AND COLLECTED CONFORM TO THE RATES AND
FARES FILED, AND THAT NO AIRLINE REBATES ANY PORTION OF
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SUCH RATES AND FARES BY ANY MEANS, DIRECTLY OR INDIRECTLY.

"3. IF THE AERONAUTICAL AUTHORITIES OF A CONTRACTING PARTY,
ON RECEIPT OF THE NOTIFICATION REFERRED TO IN PARAGRAPH
2 OF THIS ARTICLE, ARE DISSATISFIED WITH THE RATE OR
FARE PROPOSED, THE OTHER CONTRACTING PARTY SHALL BE SO
INFORMED AT LEAST FIFTEEN (15) DAYS PRIOR TO THE DATE
THAT SUCH RATE OR FARE WOULD OTHERWISE BECOME EFFECTIVE,
AND THE CONTRACTING PARTIES SHALL ENDEAVOR TO REACH AGREE-
MENT ON THE APPROPRIATE RATE OR FARE.

"4. IF THE AERONAUTICAL AUTHORITIES OF A CONTRACTING PARTY,
UPON REVIEW OF AN EXISTING RATE OR FARE CHARGED FOR
CARRIAGE TO OR FROM THE TERRITORY OF THAT PARTY BY AN
AIRLINE OR AIRLINES OF THE OTHER CONTRACTING PARTY, ARE
DISSATISFIED WITH THAT RATE OR FARE, THE OTHER CONTRACT-
ING PARTY SHALL BE SO INFORMED AND THE CONTRACTING PARTIES
SHALL ENDEAVOR TO REACH AGREEMENT ON THE APPROPRIATE RATE
OR FARE.

"5. IN THE EVENT THAT AN AGREEMENT IS REACHED PURSUANT
TO THE PROVISIONS OF PARAGRAPH 3 OR 4 OF THIS ARTICLE, EACH
CONTRACTING PARTY WILL EXERCISE ITS BEST EFFORTS TO PUT
SUCH RATE OR FARE INTO EFFECT.

"6. THE AERONAUTICAL AUTHORITIES OF THE CONTRACTING
PARTY RAISING THE OBJECTION TO THE RATE OR FARE MAY,
WITH RESPECT TO SUCH TRAFFIC THAT ORIGINATES ON A ONE-
WAY OR ROUNDTRIP BASIS IN ITS HOMELAND, TAKE SUCH STEPS
AS MAY BE CONSIDERED NECESSARY TO PREVENT THE OPERATION OF

THE SERVICE IN QUESTION AT THE RATE OR FARE COM-
PLAINED OF IF:
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"(A) UNDER THE CIRCUMSTANCES SET FORTH IN PARAGRAPH 3 OF
THIS ARTICLE, NO AGREEMENT CAN BE REACHED PRIOR TO THE
DATE THAT SUCH RATE OR FARE WOULD OTHERWISE BECOME
EFFECTIVE; OR

"(B) UNDER THE CIRCUMSTANCES SET FORTH IN PARAGRAPH 4 OF

THIS ARTICLE, NO AGREEMENT CAN BE REACHED PRIOR TO THE EXPIRATION OF SIXTY (60) DAYS FROM THE DATE OF

NOTIFICATION. HOWEVER, THE AERONAUTICAL AUTHORITIES OF THE CONTRACTING PARTY RAISING THE OBJECTION SHALL NOT REQUIRE THE CHARGING OF A RATE OR FARE HIGHER THAN THE LOWEST RATE OR FARE CHARGED BY ITS OWN AIRLINE OR AIRLINES FOR COMPARABLE SERVICE BETWEEN THE SAME POINTS.

"7. ANY RATE OR FARE SPECIFIED IN THE NATIONAL CURRENCY OF ONE OF THE CONTRACTING PARTIES SHALL BE ESTABLISHED IN AN AMOUNT WHICH REFLECTS THE EFFECTIVE EXCHANGE RATE (INCLUDING ALL EXCHANGE FEES OR OTHER CHARGES) AT WHICH THE AIRLINES OF BOTH PARTIES CAN CONVERT AND REMIT THE REVENUES FROM THEIR TRANSPORT OPERATIONS INTO THE NATIONAL CURRENCY OF THE OTHER PARTY."

3. THE ROMANIAN DELEGATION AGREED:

(A) THAT IN ORDER TO INCREASE THE FLOW OF TRAVELERS AND CARGO BETWEEN THE UNITED STATES AND ROMANIA, THE RESPONSIBLE ROMANIAN AGENCIES AND AUTHORITIES WOULD ENSURE THAT EXISTING GROUND SERVICES, HOTEL ACCOMMODATIONS, AND ALL OTHER TRAVEL INFRASTRUCTURE FACILITIES WOULD BE MADE AVAILABLE TO UNITED STATES DESIGNATED AIRLINES (BOTH SCHEDULED AND SUPPLEMENTAL) WITHOUT DISCRIMINATION AND ON THE SAME BASIS AS THAT GRANTED TO THE ROMANIAN DESIGNATED AIRLINE.

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(B) TO ACCEPT, WITHOUT RESTRICTION OR PRIOR APPROVAL, UNITED STATES ORIGINATING PASSENGER AND CARGO SERVICES (SCHEDULED AND CHARTER) OPERATED BY UNITED STATES DESIGNATED AIRLINES (BOTH SCHEDULED AND SUPPLEMENTAL) PURSUANT TO UNITED STATES RULES AND REGULATIONS AND AT PRICES

AUTHORIZED BY SUCH RULES AND REGULATIONS OR ANY WAIVER OR EXEMPTION THEREOF.

4. THE TWO DELEGATIONS FURTHER AGREED THAT THE CIVIL AIR TRANSPORT AGREEMENT SIGNED ON DECEMBER 4, 1973, WHICH EXPIRED ON MARCH 31, 1977, BE RENEWED, IN ACCORDANCE WITH THE PROVISIONS SET FORTH IN THIS NOTE. THIS RENEWED AGREEMENT SHALL SUPERSEDE THE EXCHANGE OF LETTERS DATED DECEMBER 4, 1973, AND SHALL REMAIN IN FORCE FOR A PERIOD OF TWO YEARS FROM THE DATE OF THE EXCHANGE OF DIPLOMATIC NOTES, UNLESS A REVIEW AT THE END OF THE FIRST YEAR OF OPERATION INDICATES THAT THERE HAS NOT BEEN COMPLIANCE WITH SUBPARAGRAPHS 2(A-F), 2(I) AND PARAGRAPH 3 OF THIS NOTE, IN WHICH CASE, THE PROCEDURES SET FORTH IN

SUBPARAGRAPH 2(J) OF THIS NOTE WILL APPLY.

THESE AMENDMENTS AND UNDERSTANDINGS ARE ACCEPTABLE TO THE UNITED STATES GOVERNMENT. IF THESE AMENDMENTS AND UNDERSTANDINGS ARE ALSO ACCEPTABLE TO YOUR GOVERNMENT, I HAVE THE HONOR TO PROPOSE THAT THIS NOTE AND YOUR REPLY TO THAT EFFECT CONSTITUTE AN AGREEMENT BETWEEN OUR TWO GOVERNMENTS WHICH SHALL ENTER INTO FORCE ON THE DATE OF YOUR REPLY. END TEXT.

3. USG BELIEVES SUBSTANCE OF NOTE IS IDENTICAL TO MOU IN ALL RESPECTS WITH FORM ONLY ALTERED IN SUBPARAGRAPHS CITED ABOVE AND IN NUMERATION OF PARAGRAPHS (E.G., PARA LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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3 OF MOU IS PARA 2 OF NOTE ETC.) EMBASSY REQUESTED TO CONVEY FULL TEXT OF US NOTE TO GOR FOR THEIR REVIEW. ASSUMING ACCEPTANCE, UPON COMPLETION OF REVIEW EMBASSY MAY FORMALLY EXCHANGE NOTES AT WILL. VANCE

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